

# Order

Michigan Supreme Court  
Lansing, Michigan

October 24, 2007

Clifford W. Taylor,  
Chief Justice

133867  
133868

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

BRIAN POTTER,  
Plaintiff-Appellant,

v

SC: 133867, 133868  
COA: 262529, 263538  
Washtenaw CC: 03-001226-NH

RICHARD C. McLEARY, M.D.,  
GARY AUGUSTYN, M.D., and  
ST. JOSEPH MERCY HOSPITAL  
ANN ARBOR, d/b/a TRINITY  
HEALTH-MICHIGAN,  
Defendants,

and

ROBERT DOMEIER, D.O.,  
EMERGENCY PHYSICIANS  
MEDICAL GROUP, P.C.,  
KRISTYN H. MURRY, M.D., and  
HURON VALLEY RADIOLOGY,  
P.C.,  
Defendants-Appellees.

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On order of the Court, the application for leave to appeal the February 6, 2007 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the portion of the judgment of the Court of Appeals dismissing the complaint *with* prejudice, because the dismissal should have been *without* prejudice as to the affidavit of merit issue. See *Kirkaldy v Rim*, 478 Mich 581 (2007). Accordingly, we REMAND this case to the Court of Appeals for consideration of the defendants' other issues that were not addressed in its opinion. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.



11017

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 24, 2007

*Corbin R. Davis*

Clerk